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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United States of America) CR 95-622 RSWL
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Plaintiff,) ORDER RE: Defendant
v.) Brian Keith Davis'
Brian Keith Davis) Motion to Modify Term of
Defendant.) Imprisonment Pursuant to
[309]) 18 U.S.C. § 3582(c)(2)
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The Court is in receipt of Defendant Brian Keith Davis' Motion to Modify Term of Imprisonment pursuant to 18 U.S.C. § 3582(c)(2), filed on November 01, 2010 [309] and the Government's Opposition filed on December 13, 2010 [311]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**

Defendant's Motion to Modify Term of Imprisonment is **DENIED**. The Court finds that the Defendant's reliance on United States v. Booker is misplaced as

1 Booker has no applicability to sentencing modifications
2 sought pursuant to 18 U.S.C. § 3582 (c)(2). 543 U.S.
3 220 (2005).

4 Relying on Booker, the Defendant contends that the
5 Court may apply retroactively 18 U.S.C. 3582(c)(2) to
6 reduce his current 210 month sentence to 110 months.
7 However, in Dillon v. United States, 130 S.Ct 2683,
8 2690-93 (2010), the Supreme Court has held that the
9 Booker decision is inapplicable to § 3582(c) (2)
10 proceedings. The Dillon Court concluded that the
11 Commission's directives in § 1B1.10 foreclose a court
12 acting under § 3582(c)(2) from reducing a sentence to a
13 term that is less than the minimum of the amended
14 guideline range. Id. at 2686. Since this Court on
15 April 30, 2008 reduced Defendant's sentence to 210
16 months [308], which is the minimum sentencing range,
17 Defendant's sentencing range has not been subsequently
18 lowered by the Sentencing Commission.

19 Moreover, in United States v. Cruz, 423 F.3d 1119,
20 1120 (9th Cir. 2005), the Ninth Circuit expressly held
21 that the Booker decision is inapplicable to convictions
22 that had become final before Booker's publication.
23 Because Defendant's conviction became final in 1998 and
24 the Booker decision was rendered in 2005, Booker cannot
25 be applied retroactively to Defendant's conviction.

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1 Accordingly, Defendant's Motion to Modify Term of
2 Imprisonment pursuant to 18 U.S.C. § 3582(c)(2) is
3 **DENIED**.

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5 DATED: January 26, 2011

6 **IT IS SO ORDERED.**

7 RONALD S.W. LEW

8 **HONORABLE RONALD S.W. LEW**
9 Senior, U.S. District Court Judge

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